

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT JACKSON  
November 8, 2000 Session

**STATE OF TENNESSEE v. JOHN RUFF**

**Circuit Court for Shelby County**  
**No. 96-09407, 08**

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**No. W1999-01536-CCA-R3-CD - Filed January 19, 2001**

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James Curwood Witt, Jr., J., concurring and dissenting.

I concur with the majority's rationale that led to the conclusion that the charges were properly dismissed below without prejudice. However, I also agree with the majority's statements about the unavailability of a Rule 3 appeal in this case. Because no appeal as a matter of right is availed to the defendant under Rule 3, I would conclude that this court is without jurisdiction to consider the defendant's issue with respect to the dismissal of charges without prejudice. *See* Tenn. R. App. P. 3(b). Although the practical result is the same in that the action of the trial court is not being reversed, I would dismiss the appeal.

The majority has undertaken to consider the substantive issue, and had we the jurisdiction to consider it, I would concur in Judge Welles's excellent analysis.

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JAMES CURWOOD WITT, JR., JUDGE